

TCEQ DOCKET NO. 2013-0775-MWD

APPLICATION BY	§	BEFORE THE
TALL TIMBERS UTILITY CO, INC.	§	
FOR TPDES	§	TEXAS COMMISSION ON
PERMIT NO. WQ00130000001	§	ENVIRONMENTAL QUALITY

CITY OF TYLER'S REPLIES TO RESPONSES

I. Introduction

The City of Tyler timely filed, on April 12, 2013, a request for contested case hearing and a request for reconsideration regarding the TPDES permit application filed by Tall Timbers Utility Company, Inc. On May 24, 2013, the Executive Director and the Office of Public Interest Counsel filed responses to Tyler's hearing request. Notably, Tall Timbers did not file a response to Tyler's hearing request. Pursuant to the Chief Clerk's letter of May 14, 2013, Tyler files the following reply to the responses filed by the Executive Director and OPIC.

II. Summary

The Executive Director and OPIC both argue that Tyler's request for contested case hearing should be denied under Texas Water Code §26.028(d) and 30 TAC 55.201(i)(5) because the application is merely a "renewal" application and because Tall Timbers' compliance history does not raise any issues regarding Tall Timbers' ability to comply with the permit. Tyler disagrees with the Executive Director and OPIC on both grounds. Tall Timbers' application is seeking to authorize construction of additional wastewater treatment plant in contravention of the Commission's goals for regionalization, and Tall Timbers' failure to comply with its two prior permits directly raises issues of its ability to comply the proposed permit.

III. Replies Regarding Request for Contested Case Hearing

A. Tall Timbers is applying to increase the quantity of its discharge

As more fully set out in its request for a contested case hearing, Tall Timbers' draft permit authorizes an increase in the quantity of Tall Timbers' discharge. This is a simple, straight-forward issue. Tall Timbers admits that its plant has an "as-built" capacity of 0.312 MGD. (Attachment A) The draft permit authorizes discharges (after construction of improvements) of 0.445 MGD. Because the draft permit authorizes discharges in excess of the plant's as-built capacity (0.312 MGD), the draft permit authorizes an increase in the quantity of

waste Tall Timbers is allowed to discharge, and the application is, therefore, subject to a contested case hearing.

The Executive Director and OPIC argue that no contested case hearing is authorized because the draft permit does not increase the quantity of waste *authorized* to be discharged. In essence, they argue that Tall Timbers was previously authorized to discharge 0.445 MGD (daily average flow) and 927 gpm (2-hour peak). The Executive Director and OPIC are mistaken.

The answer to the question of the quantity of waste that Tall Timbers is *authorized* to discharge requires a detailed look at Tall Timbers' existing and prior permits. Fundamentally, the Commission does not *authorize* discharges beyond the capacity of a wastewater plant to treat. This is why the Commission uses interim and final limits and why the applicability of final limits is always contingent on the actual completion of construction of sufficient plant. Tall Timbers has never been authorized to discharge at 0.445 MGD or at 927 gpm because Tall Timbers has never completed the expansion of its plant to adequately treat those quantities of discharge.

Tall Timbers' 2002 permit contained interim and final effluent limits (Attachment B). The interim limits authorized Tall Timbers to discharge up to 0.250 MGD, and final limits authorized discharge up to 0.445 MGD.¹ The authorization to discharge up to 0.445 MGD in the 2002 permit was contingent "upon *the completion of expansion of the 0.445 MGD facilities.*"² As admitted by Tall Timbers and by the Executive Director, Tall Timbers has never completed the expansion of the 0.445 MGD facilities.³ Therefore, Tall Timbers was never authorized to discharge up to 0.445 MGD. Because Tall Timbers only built plant capable of treating up to 0.312 MGD, Tall Timbers was only authorized to discharge up to 0.312 MGD.

Tall Timbers' 2006 permit contained an interim 2-hour peak limit of 527 gpm and a final 2-hour peak limit of 927 gpm.⁴ Although the permit implies that the final limit would automatically go into effect 18 months after permit issuance, that implication was based on the assumption (and legal requirement) that Tall Timbers would construct the necessary improvements to provide sufficient capacity within 18 months. There is no dispute that Tall

¹ TPDES Permit No 13000-001, page 2a (May 23, 2002). (Attachment B).

² *Id.*

³ Tall Timbers' 2006 permit purports to authorize discharges up to 0.445 MGD (Attachment C), but that authorization was based on the misrepresentation made by Tall Timbers that it had constructed sufficient plant to adequately treat 0.445 MGD.

⁴ TPDES Permit No. WQ0013000001, pages 2-2a (December 29, 2006). (Attachment C).

Timbers failed to construct the necessary facilities within 18 months. Therefore, Tall Timbers has never been *authorized* by the permit to discharge at more than 527 gpm.

As explained in Tyler's request, this issue has real world consequences. If a discharger is *authorized* to discharge at quantities that exceed the as-built capacity of the plant, the Commission will be unable to effectively enforce the permit. This is the case with Tall Timbers. Tall Timbers' discharge monitoring reports show that Tall Timbers has previously discharged in excess of 0.312 MGD. These discharges were not considered to be violations of the permit because the permit purportedly authorized discharges of 0.445 MGD. Had the permit been properly interpreted, these discharges would have been considered violations. Along with discharges above the as-built capacity of the plant, Tall Timbers has repeatedly violated pollutant-specific effluent limits as would be expected of a plant operating beyond its capacity.

More importantly to Tyler, however, is that the Executive Director's draft permit will authorize Tall Timbers to construct additional plant (plant that it should have constructed before 2006). Tyler believes that this additional plant is not necessary now because Tyler can provide Tall Timbers with wholesale wastewater treatment service, and that such service will benefit Tall Timbers' customers (because Tyler can provide treatment at a lower cost than Tall Timbers), Tyler's customers (because of better use of Tyler's existing capacity), and will improve water quality in the area (because Tyler is subject to more stringent effluent limits and operates a pretreatment program). Tyler could provide this service within 60 days. Tyler currently has excess capacity in its wastewater plant located adjacent to Tall Timbers' plant, and Tyler is actively developing a regional wastewater treatment plant sized to treat all wastewater from the greater Tyler/Smith County area for the next 30 years.

The Executive Director has recognized that a regionalization evaluation would be required if Tall Timbers were seeking an increase in flow.⁵ The Executive Director declined to require the evaluation for this application because the Executive Director determined that Tall Timbers was not seeking an increase in flow. As explained previously, the draft permit authorizes an increase in flow and will require the construction of additional treatment plant. The Commission's policy on regionalization⁶ directs the Commission to determine whether the construction of additional treatment plant capacity is needed as part of the application process.

⁵ Executive Director's Response to Comments, page 13-14.

⁶ Tex. Water Code § 26.0282.

By ignoring the fact that Tall Timbers will have to expand its plant to meet the final permit limits, the Executive Director is preventing the Commission from fulfilling its statutory obligation to promote regionalization.

Texas Water Code § 26.081(a):

The legislature finds and declares that it is necessary to the health, safety, and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of water in the state.

As Tyler has repeatedly stated throughout this process that it would not oppose a renewed permit that provided Tall Timbers with authorization based on its as-built capacity, but the Executive Director continues to insist on allowing Tall Timbers' to expand its plant without public review. Because the Executive Director insists on this action, Tyler wants the ability to demonstrate in a contested-case hearing that any further expansion of Tall Timbers' plant is not needed because Tyler can provide the additional treatment services to Tall Timbers on a wholesale basis, and that by providing such service Tyler can reduce costs and enhance the quality of water in the state.

B. Tall Timbers' compliance history clearly raises issues concerning Tall Timbers' ability to comply with a material term of its permit

The Commission may grant a contested case hearing for the renewal of a wastewater permit if the applicant's compliance history raises issues regarding the applicant's ability to comply with a material term of its permit.⁷ Tyler asserts that Tall Timbers' compliance history clearly raises concerns regarding Tall Timbers' ability to expand its plant to meet the final permit limits.

The Executive Director and OPIC focus only on Tall Timbers' general compliance history. Not only is this compliance history incomplete,⁸ but it also ignores the statutory directive to look at compliance vis-à-vis specific permit terms. Tall Timbers has twice before

⁷ Tex. Water Code § 26.028(d)(4); 30 TAC § 55.201(i)(5)(E).

⁸ The compliance history attached to the Executive Director's response ignores Tall Timbers' notices of violations since 2010 and does not include Tall Timbers pending enforcement order (2012-0629-MWD-E).

been ordered to expand its plant to be capable of treating up to 0.445 MGD, both in 2002 and in 2006. Twice before it failed to expand its plant as ordered. In its 2006 permit, Tall Timbers was specifically ordered to complete this expansion within 18 months. It failed to do so, and that failure was expressly a violation of its permit. Tall Timbers has previously admitted that it knowingly chose to violate this permit condition (Attachment D). These violations clearly raise issues about Tall Timbers' ability to comply with the draft permit's final effluent limits. Tyler asserts that the Commission should hold a contested case hearing to determine whether Tall Timbers has the ability to expand its treatment as required by the draft permit. Tall Timbers has been under an obligation to expand this plant for the last 11 years and failed to do so, there is no reason to believe that Tall Timbers will now suddenly decide to comply.

IV. Replies to Request for Reconsideration

Tyler requested reconsideration of the Executive Director's decision not to deny Tall Timbers' application based on Tall Timbers' failure to construct facilities necessary to comply with its permit and on Tall Timbers' misrepresentations in its application regarding buffer zones and the capacity of the plant. The Executive Director responds that it addressed these issues in its response to comments. Tyler respectfully disagrees with the Executive Director's response. The Executive Director has never explained why it is acceptable for Tall Timbers to blatantly ignore clear Commission orders and to purposefully misrepresent material facts in its application. Apparently, the Executive Director believes that it is acceptable practice for regulated entities to ignore Commission orders and to misrepresent facts to the Commission.

According to the Executive Director, Tall Timbers' failure to construct additional plant, as ordered in its 2006 permit, is acceptable because monitored values "appear to be within the permitted limits."⁹ According to the Executive Director, it is good enough that Tall Timbers came close to complying most of the time because, as he notes, over this same period of time Tall Timbers reported one flow excursion, one TSS excursion, and eleven excursions of the ammonia-nitrogen limit.¹⁰ The Executive Director's response ignores the Commission rules, which expressly authorize the Commission to deny an application for failing to construct

⁹ Executive Director's Response to Comments, page 7.

¹⁰ *Id.*, page 9.

facilities necessary to conform to a permit¹¹ and for failing to fully disclose or misrepresenting relevant facts.¹²

The facts regarding this issue are not in dispute. Tall Timbers has had since 2002 to expand its plant to 0.445 MGD. Tall Timbers was specifically ordered to expand its chlorine contact chamber by 2008. Tall Timbers affirmatively chose not to expand its plant as ordered. Moreover, Tall Timbers affirmatively chose not to inform the Commission that it was flagrantly disregarding the orders to expand, and then misrepresented that it had completed these expansions when it knew that this was not true.

Tall Timbers also repeatedly misrepresented that it met the buffer zone requirements when it had not. The Executive Director's response to these misrepresentations appears to be that these misrepresentations are immaterial because the draft permit will address these issues going forward.¹³ Again, this response does not address the lack of consequences for Tall Timbers' prior misrepresentations of fact. The Commission should not condone behavior that undermines the foundation of its permitting system – that applicants fully and accurately represent material facts relating to their applications.

V. Conclusion/Prayer

Tyler asserts that it should be granted a contested case hearing to prove that further expansion of Tall Timbers' plant is not needed. The goals of the Legislature's and the Commission's policy on regionalization of wastewater treatment will be met if the Commission concludes that the construction of additional wastewater treatment plant by Tall Timbers is not needed. Tyler can provide wholesale wastewater treatment service to Tall Timbers more cost-effectively and to a higher quality than Tall Timbers can treat its wastewater.

The Commission is not prohibited from providing a contested case hearing because the draft permit seeks to significantly increase the authorized quantity of discharge from the plant – from 0.312 MGD to 0.445 MGD and from 527 gpm to 927 gpm. Additionally, Tall Timbers' compliance history clearly raises issues regarding Tall Timbers' ability to expand the plant to 0.445 MGD, which is a material term of the permit.

¹¹ 30 TAC § 305.66(a)(1).

¹² 30 TAC § 305.66(a)(4).

¹³ *Id.*, page 10.

Alternatively, Tyler requests that the Commission deny Tall Timbers' application based on Tall Timbers' failure to construct facilities as required by permit and based on Tall Timbers' misrepresentation of material facts in its application.

Respectfully submitted,

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327 Congress Ave., Ste. 300
Austin, Texas 78701
Telephone (512) 404-7800
Facsimile (512) 703-2785
Email: jfreeland@mandf.com

By: 
Joe Freeland
TBN: 07417500

ATTORNEYS FOR
THE CITY OF TYLER

CERTIFICATE OF SERVICE

I hereby certify that on this the 7th day of June, 2013, a true and correct copy of the foregoing document was served on the individuals listed below by hand deliver, email, facsimile or First Class Mail.

Kathy Humphreys, Staff Attorney
Executive Director
Texas Commission on Environmental Quality
Environmental Law Division
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Tel: (512) 239-3417
First Class Mail

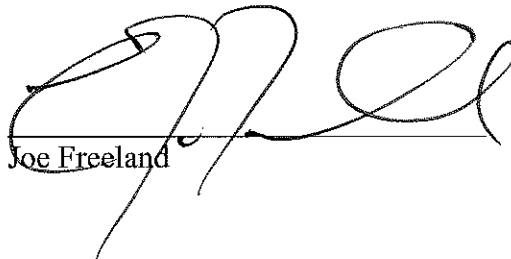
Eli Martinez
Office of Public Interest Counsel
Texas Commission on Environmental Quality
P.O. Box 13087, MC-103
Austin, Texas 78711-3087
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First Class Mail

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Oakville, Ontario L6H 7H7
Canada
(905) 465-4533

Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, TX 78711-3087
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Robert Bryant
Water Works Engineers, LLC
7580 North Dobson Road, Suite 200
Scottsdale, Arizona 85256
(480) 661-1742

Brian Hamrick
Liberty Water Company
12725 West Indian School Road, Suite D101
Avondale, Arizona 85392
(623) 298-3756
First Class Mail



Joe Freeland

Attachment A



WATERWORKS

E N G I N E E R S

Texas Commission on Environmental Quality
Water Quality Division
Louis Herrin, PE
PO Box 13087
Austin, TX 78711-3087

Project:
File: 10-055
10/19/2011

Subject: Tall Timbers Estate Utility Company d.b.a. Liberty Water Company
Interim and Final Phase Capacity Analysis

Dear Mr. Herrin:

Based on our meeting with TCEQ staff on September 30, 2011, the attached capacity analysis is provided in response to the issues raised regarding current process basin capacities.

In summary, the limiting basins within the existing facility are the secondary clarifiers. These have an average day limit of 0.312MGD with a 3Q, 2-hr peaking factor (650gpm).

As discussed, baffling is in the process of being added to the Post Aeration Basin to provide additional chlorine contact retention time. The additional volume combined with the existing Chlorine Contact Basins allows for 0.807MGD of average annual flow and 3Q, 2-hr peak flows with an hydraulic retention time of 20 minutes.

Consecutive to this submittal regarding revised capacity, a 75%/90% waiver is being filed with the compliance division.

Should you have any further questions, please feel free to contact me at 832-398-1510.

Very Truly Yours
WATER WORKS ENGINEERS, LLC

Rob Bryant, PE
Project Manager

RECEIVED

OCT 25 2011

WATER QUALITY DIVISION
TCEQ



WATERWORKS ENGINEERS

Texas Commission on Environmental Quality
Enforcement Division
Merrilee Hupp
PO Box 13087
Austin, TX 78711-3087

Project:
File: 10-055
11/15/2011

Subject: Tall Timbers Estates Utility Company d.b.a. Liberty Water Company
Request For Waiver From 30 TAC§ 305.126(a)
Permit No. WQ0013000001, RN 101519981, CN 600794945

Dear Ms. Hupp:

Please find enclosed Tall Timbers Estates Utility Company's request for waiver from 30 TAC§ 305.126(a), also known as the 75%/90% rule.

The request is being submitted based on discussions with the TCEQ permit renewal team (Firoj Vahora, Julian Centeno and Louis Herrin).

The current plant permit is for 0.445mgd. However, after review of the existing facilities, the clarifiers have a capacity limit of 0.312mgd. This flow will be written into the current permit amendment as an interim phase with a final phase of 0.445mgd. Current average daily flows at the facility are 0.269mgd which exceeds the 75% threshold (0.234mgd).

Tall Timbers has begun the planning for the expansion of this facility and will be submitting plans to TCEQ within the coming year.

Should you have any further questions, please feel free to contact me at 832-398-1510.

Very Truly Yours
WATER WORKS ENGINEERS, LLC

Rob Bryant, PE
Project Manager

Attachment B



TPDES PERMIT NO. 13000-001
[For TNRCC Office Use Only:
EPA ID No. TX0101010]

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
P.O. Box 13087
Austin, Texas 78711-3087

This amendment supersedes and
replaces TPDES Permit No. 13000-
001 issued October 15, 1999.

PERMIT TO DISPOSE OF WASTES

under provisions of
Section 402 of the Clean Water Act
and Chapter 26 of the Texas Water Code

Tall Timbers Utility Company, Inc.

whose mailing address is

3406 SSW Loop 323
Tyler, Texas 75701

is authorized to treat and dispose of wastes from the Tall Timbers Sewage Treatment Plant, SIC Code 4952

located on County Road 128, approximately 2,800 feet north and 6,500 feet west of the intersection of Highway 69 South and Farm-to-Market Road 2813 and 6.1 miles south-southwest of the City of Tyler in Smith County, Texas

to an unnamed tributary of West Mud Creek; thence to West Mud Creek; thence to Mud Creek; thence to the Angelina River Above Sam Rayburn Reservoir in Segment No. 0611 of the Neches River Basin

only according with effluent limitations, monitoring requirements and other conditions set forth in this permit, as well as the rules of the Texas Natural Resource Conservation Commission (TNRCC), the laws of the State of Texas, and other orders of the TNRCC. The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

This permit shall expire at midnight, August 1, 2006.

ISSUED DATE: MAY 23 2002

A handwritten signature in black ink, appearing to read "Jeffrey A. Sade".

For the Commission

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTSOutfall Number 001

1. During the period beginning upon the date of issuance and lasting through the completion of expansion of the 0.445 MGD facilities, the permittee is authorized to discharge subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.250 million gallons per day (MGD); nor shall the average discharge during any two-hour period (2-hour peak) exceed 521 gallons per minute (gpm).

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>			<u>Minimum Self-Monitoring Requirements</u>	
	<u>Daily-Avg</u> mg/l(lbs/day)	<u>7-day Avg</u> mg/l	<u>Daily Max</u> mg/l	<u>Report Daily Avg. & Max.</u>	<u>Single Grab</u> Measurement Frequency Sample Type
Flow, MGD	Report	N/A	Report	Five/week	Instantaneous
Carbonaceous Biochemical Oxygen Demand (5-day)	10 (21)	15	25	One/week	Grab
Total Suspended Solids	15 (31)	25	40	One/week	Grab
Ammonia Nitrogen	3 (6.3)	6	10	One/week	Grab

2. The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.
3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per month by grab sample.
4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.
6. The effluent shall contain a minimum dissolved oxygen of 6.0 mg/l and shall be monitored once per week by grab sample.

FINAL EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTSOutfall Number 001

1. During the period beginning upon the completion of the expansion of the 0.445 MGD facilities and lasting through the date of expiration, the permittee is authorized to discharge subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.445 million gallons per day (MGD); nor shall the average discharge during any two-hour period (2-hour peak) exceed 927 gallons per minute (gpm).

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>			<u>Minimum Self-Monitoring Requirements</u>	
	<u>Daily Avg</u> mg/l(lbs/day)	<u>7-day Avg</u> mg/l	<u>Daily Max</u> mg/l	<u>Report Daily Avg. & Max.</u>	<u>Single Grab</u> Measurement Frequency Sample Type
Flow, MGD	Report	N/A	Report	Five/week	Instantaneous
Carbonaceous Biochemical Oxygen Demand (5-day)	10 (37)	15	25	One/week	Grab
Total Suspended Solids	15 (56)	25	40	One/week	Grab
Ammonia Nitrogen	3 (11)	6	10	One/week	Grab

2. The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.

3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per month by grab sample.

4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.

6. The effluent shall contain a minimum dissolved oxygen of 6.0 mg/l and shall be monitored once per week by grab sample.

Attachment C



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. Box 13087
Austin, Texas 78711-3087

TPDES PERMIT NO. W00013000001
[For TCEQ Office Use Only:
EPA ID No. TX0101010]

This is a renewal that replaces
TPDES Permit No. 13000-001 issued
May 23, 2002.

PERMIT TO DISCHARGE WASTES
under provisions of
Section 402 of the Clean Water Act
and Chapter 26 of the Texas Water Code

Tall Timbers Utility Company, Inc.

whose mailing address is

12725 West Indian School Road, Suite D101
Avondale, Arizona 85340

is authorized to treat and discharge wastes from the Tall Timbers Wastewater Treatment Facility, SIC Code 4952 located on County Road 128, approximately 2,800 feet north and 6,500 feet west of the intersection of Highway 69 South and Farm-to-Market Road 2813 and 6.1 miles south-southwest of the City of Tyler in Smith County, Texas to an unnamed tributary; thence to West Mud Creek; thence to Mud Creek; thence to the Angelina River Above Sam Rayburn Reservoir in Segment No. 0611 of the Neches River Basin

only according with effluent limitations, monitoring requirements and other conditions set forth in this permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ), the laws of the State of Texas, and other orders of the TCEQ. The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

This permit shall expire at midnight, August 1, 2011.

ISSUED DATE: **DEC 29 2006**

A handwritten signature in black ink, appearing to be "R. Mark", written over a horizontal line.

For the Commission

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTSOutfall Number 001

1. During the period beginning upon the date of issuance and lasting through eighteen months from the date of issuance, the permittee is authorized to discharge subject to the following effluent limitations:

The daily average flow of effluent shall not exceed ~~0.445 million gallons per day (MGD)~~, nor shall the average discharge during any two-hour period (2-hour peak) exceed ~~527~~ gallons per minute (gpm).

Effluent Characteristic	Discharge Limitations			Minimum Self-Monitoring Requirements	
	Daily Avg mg/(lbs/day)	7-day Avg mg/l	Daily Max mg/l	Report Daily Avg. & Max Measurement Frequency	Single Grab Sample Type
Flow, MGD	Report	N/A	Report	Five/week	Instantaneous
Carbonaceous Biochemical Oxygen Demand (5-day)	10 (37)	15	25	One/week	Grab
Total Suspended Solids	15 (56)	25	40	One/week	Grab
Ammonia Nitrogen	3 (11)	6	10	One/week	Grab

2. The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.
3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per month by grab sample.
4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.
6. The effluent shall contain a minimum dissolved oxygen of 6.0 mg/l and shall be monitored once per week by grab sample.

FINAL EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTSOutfall Number 001

1. During the period beginning upon eighteen months from the date of issuance and lasting through the date of expiration, the permittee is authorized to discharge subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.445 million gallons per day (MGD); nor shall the average discharge during any two-hour period (2-hour peak) exceed 927 gallons per minute (gpm).

Effluent Characteristic	Discharge Limitations			Minimum Self-Monitoring Requirements	
	Daily Avg. mg/l (lbs/day)	7-day Avg mg/l	Daily Max mg/l	Report Daily Avg. & Max. Measurement Frequency	Single Grab Sample Type
Flow, MGD	Report	N/A	Report	Five/week	Instantaneous
Carbonaceous Biochemical Oxygen Demand (5-day)	10 (37)	15	25	One/week	Grab
Total Suspended Solids	15 (56)	25	40	One/week	Grab
Ammonia Nitrogen	3 (11)	6	10	One/week	Grab

2. The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.
3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per month by grab sample.
4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.
6. The effluent shall contain a minimum dissolved oxygen of 6.0 mg/l and shall be monitored once per week by grab sample.

Attachment D

SOAH DOCKET NO. 582-10-1923
TCEQ DOCKET NO. 2009-2054-UCR

PETITION UNDER WATER	§	BEFORE THE STATE OFFICE
CODE SECTION 13.254(A)	§	
FROM THE CITY OF TYLER,	§	
CERTIFICATE OF	§	
CONVENIENCE AND	§	
NECESSITY (CCN) NO.	§	OF
20319, TO REVOKE CCN NO.	§	
20694 FROM TALL TIMBERS	§	
UTILITY COMPANY, INC. IN	§	
SMITH COUNTY,	§	
APPLICATION NO. 36476-D	§	ADMINISTRATIVE HEARINGS

PREFILED TESTIMONY OF SEAN M. LONERGAN

1 Q. Please state your name and business address.

2 A. Sean M. Lonergan
3 Liberty Water
4 16623 FM 2493 Suite E
5 Tyler, Texas 75703¹
6

7 Q. By whom are you employed and in what capacity?

8 A. I am employed by Liberty Water Company, a subsidiary of
9 Algonquin Power and Utilities Corp.. I am the Director of Operations, Central
10 Region.
11

12 Q. Please describe your educational and work background.

13 A. A copy of my resume is attached to this testimony.² I have many
14 years of experience in different aspects of regulated public utilities. For example,
15 my work with Deloitte Consulting and Accenture involved public utility
16 management and acquisitions. Since my employment with Liberty Water, I have
17 been very active in the Independent Water and Sewer Companies of Texas
18 (IWSCOT), the Texas trade association of privately owned water and sewer
19 companies. I am a director of IWSCOT. I have attended numerous IWSCOT
20 training seminars approved by the TCEQ and at which TCEQ employees have
21 lectured on the interpretation and application of TCEQ rules.
22

¹ This is the address for the new office. It is not yet shown on all the attachments to my testimony.

² Exhibit 1

1 responsibility of Tyler. If Tyler is going to use the TTUC sewer system to
2 transport and dispose of storm waters, Tyler needs to apply for sewer service
3 and pay service rates.

4
5 Q. Mr. Morgan has presented additional claims that TTUC is in
6 violation of its permits and/or TCEQ rules due to a chlorine contact chamber and
7 a buffer zone around the WWTP. Are these true?

8 A. We were aware of the issue with the chlorine contact chamber (CCC). It
9 is addressed in the current TPDES discharge permit for the plant that was issued
10 in 2006.²⁹ The CCC is supposed to provide for 20 minutes of hydraulic detention
11 at peak flow to assure adequate contact time for disinfection. The CCC at this
12 plant only has a hydraulic detention time of 13.7 minutes at a 2 hr peak flow of
13 927 gpm. We had Gary Burton, PE design an expansion of the CCC in January
14 2008. The project went out to bid in March 2008, and we received two bids of
15 \$172,469 (Wilkins Contracting) and \$205,538 (McKinney and McMillan). It was
16 decided that we should not proceed on this project due to the potential
17 condemnation of the utility.

18
19 Attached is a 2006 letter from Gary Burton to TCEQ asking for an interim
20 limit in the permit of 527 gpm peak flow (which accounts for the undersized

²⁹ Exhibit 4, a business record of TTUC maintained at my direction